

***United States Court of Appeals  
for the Second Circuit***



**SUPPLEMENTAL  
BRIEF**



ORIGINAL

74-1827  
75-1200

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**United States Court of Appeals**

**For the Second Circuit.**

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UNITED STATES OF AMERICA,

*Appellee,*

v.

PEDRO MORELL and RAMON BRUZON,

*Appellants.*

*On Appeal from Judgment of the United States District Court  
Eastern District of New York*

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**S U P P L E M E N T A L   B R I E F**

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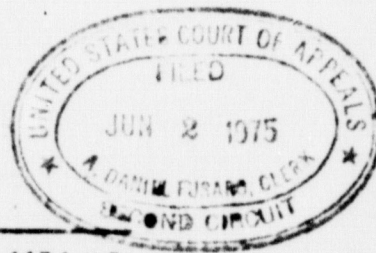
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### ISSUE PRESENTED

Whether the District Court erred in denying the defendants a new trial?

### PRELIMINARY STATEMENT

On December 17, 1974 this case was remanded by this Court to the District Court (Costantino, J.) with instructions to make appropriate findings of fact and conclusions of law with respect to the disclosures made by the government as a result of their failure to turn over materials relating to their chief witness. (SA6)\*

Defendants further claimed the right of a new trial, by letter dated February 7, 1975, after review of the materials received from the government on December 20, 1974. (SA48)

On March 13, 1975 a hearing was held before the District Court and a decision was rendered denying defendants relief. (SA59-95) The District Court entered an order on March 14, 1975, as aforementioned. (SA96)

This supplemental brief is submitted pursuant to order of this Court dated May 9, 1975.

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\* SA reference to the pages of the Supplemental Appendix.

### STATEMENT OF THE CASE

During the course of the trial defendants indicated to the Court that there were records in the possession of the government that should be turned over for the purpose of cross-examination pursuant to 18 U.S.C.A. 3500.

(123)\* Furthermore, the defendants indicated that they were also entitled to the receipt of the requested materials pursuant to Brady v. Maryland (373 U.S. 83 [1963]).

This application was denied by the District Court at trial. The defendants were convicted after trial. In fact, during the course of the trial the United States Attorney denied that he had in his possession any material relating to the arrest record of the government's lynchpin witness. Furthermore, the Assistant United States Attorney specifically refused to attempt to locate the materials or make an effort to provide them to defendants' counsel. (SA48-49, 50-53; 123, 316, 359, 622)

Less than one week prior to the argument of the appeal in this matter (74-1827) the government suddenly revealed the materials that were requested by the defendants' counsels prior to and during the trial of this action, together with additional materials bearing upon the motive and credibility of their chief witness -- which had hereto-

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\*Numerical references are to the Joint Appendix on file herein.



not been turned over to counsels or the trial Court.

(SA3-5)

The additional materials concerning Valdez (SA7-SA47) consisted not only of what had been requested originally prior to trial and during trial but other valuable materials, to wit:

(1) Valdez was sentenced on May 18, 1972 and not in either May of 1970 or 1971 as he indicated at trial.

(2) The District Court Judge in Florida supposedly conditioned Valdez' probation on his continued cooperation.

(3) In all previous cases in which Valdez worked he introduced undercover agents to the drug dealers.

(4) In April of 1973, the Drug Enforcement Administration requested that the Immigration and Naturalization Service permit Valdez' wife to remain in the United States with him until the cases on which Valdez worked were concluded.

(5) The Drug Enforcement Administration interceded with the United States Attorney's Office in Florida to obtain an early termination of Valdez' probation.

#### ARGUMENT

Since a significant part of the defense was based upon a contention that Valdez was still dealing in cocaine and that the cocaine seized was connected with him

and/or Urbano Ramos, that position would have been corroborated had they been in possession of the undisclosed materials, which revealed that:

(1) In each case that Valdez participated in prior to the Morell-Bruzon investigation, he introduced an undercover agent to effect the purchase of drugs.

(2) In every case after the Morell-Bruzon investigation, Valdez introduced an undercover agent for the purpose of purchasing the drugs.

(3) In a report of investigation dated April 10, 1972 signed by Agent McElroy, no mention is made of the Morell-Bruzon investigation which allegedly began in April, 1972, and, in fact, the report of investigation mentions that Valdez was, at that time, attempting to introduce an undercover agent to another person for the purpose of purchasing narcotic drugs. This information, in the hands of defense counsel, would have and could have been used to considerably support the defendants' contention that Valdez' involvement in this case was his own involvement.

Additional information bearing upon Valdez' motivation for testifying favorably for the Government is contained in the recently disclosed material. In April of 1973, the Drug Enforcement Administration, by its Regional Director, Daniel P. Casey, interceded with the Immigration and Naturalization Service, on behalf of Valdez' wife, who was an illegal alien, in order to permit her to remain in



the United States until "these cases (including the Morell-Bruzon case) are brought to a conclusion". Moreover, according to that newly disclosed material, the Bureau of Narcotics and Dangerous Drugs directly interceded with the United States Attorney in Florida to obtain for Valdez a termination of his three year probation after little more than one year had expired. Accordingly, the true fact regarding Valdez' termination was that it occurred in July of 1973 at the instance and request of the Government and not sometime in 1974 after three years of supervision as the testimony at trial indicates.

The newly disclosed material contained significant and relevant facts which undoubtedly would have and could have been used by defense counsel for the purpose of cross-examination and the defendants, therefore, are entitled to a new trial. United States v. Fried, U.S. Court of Appeals, 2nd Cir., October 12, 1973, slip op. p. 121 no. 133; United States v. Houle, U. S. Court of Appeals, 2nd Cir., December 27, 1973, slip op. p. 985, nos. 424, 425, 426. United States v. Badalamente, U. S. Court of Appeals, 2nd Cir., November 21, 1974, slip op. p. 5899, nos. 1186-1205.

Furthermore, it was revealed that the Bureau of Narcotics and Dangerous Drugs interceded on behalf of witness Valdez and recommended a suspended sentence to the District Judge before whom Valdez was sentenced. (SA35-SA40)



Moreover, this direct intercession on witness Valdez' behalf commenced on May 17, 1972, the period during which Valdez was allegedly reporting to the agents facts which ultimately resulted in this indictment. In fact, on May 18, 1972 the District Court sentenced Valdez to three years probation upon the stipulation that Valdez would continue to cooperation with the BNDD. (SA37) Indoubtedly, Valdez was aware of the necessity to supply the Government with materials that would be of interest to them. None of the aforementioned information was available to defense counsels during the course of cross-examination even though they asked for it.

It is specifically noted that during the course of the trial the agent directly involved with Valdez who was knowledgeable of all of the facts and circumstances concerning Valdez' cooperation, sentence and construction of this indictment remained silent. (SA37) (As an aside, it is also noted that Agent McElroy's receipt for the monies paid Valdez indicated that payment of \$1,500 to Valdez was "for services rendered re...seizures..." [SA34], contrary to Valdez' testimony that payment was for expenses.)

During the course of the trial the true facts surrounding Valdez' arrest, conviction, probation and the conditions and circumstances surrounding his cooperation were withheld. We are now able to view Valdez' testimony

as false and misleading -- a fact which defendants were unable to display before the jury.

We now have documentary evidence to show that Valdez' testimony was false. (SA50)

The post trial turnover indicated that the Government's trial reliance upon Valdez' neutrality was, if not totally in error, misplaced. In fact, the theory of the prosecution as elucidated by their opening and summation statements to the jury placed suitable emphasis upon the lack of condition\*, pressure or promises for Valdez' cooperation.

As an example, the Government stated to the jury on summation:

"We know that, at the time this case occurred in 1972, Valdez was under no compulsion to cooperate with the Government..." (622)

Agent McElroy had actual knowledge that Valdez was under a compulsion to cooperate with the Government, as a result of the conditions placed upon him by the Florida Court. Therefore, the Government had actual knowledge of the false statements. See Giglio v. United States, 405 U.S. 150-154 (1972).

The District Court determined that:

"...The files contained fairly extensive information about the informant, including vouchers, reports of other non-related investigations and various other documents..." (SA93)

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\* To the contrary, see SA37 signed by Agent McElroy.



Nevertheless, the Court stated:

"Without making any findings whether the prosecution's conduct in this case was grossly negligent or merely inadvertent, this Court holds under either standard the relief requested by the defense counsel should be denied." (SA94)

The trial Court further found:

"The information disclosed in the files is either cumulation of information already known to defense counsel at trial and incidentally used by them to cross-examine the informant, or is irrelevant to this investigation, and, therefore, inadmissible at trial." \* (SA94)

Finally, the Court admonished the Government:

"...The Government should learn a lesson from this incident, care should be taken not to conceal this type of information in the future and the failure of Agent McElroy to correct misinformation was serious error." (SA 95)

"If the Government...ignores evidence of such high value that it could not have escaped its attention, 'a new trial is warranted if the evidence is merely material or favorable to the defense'. United States v. Kahn, 472, F2d, 272, 287 (2nd Cir. 1973), cert. denied, 411 U.S. 982 (1973)" United States of America v. Rosner, Slip Op. Nos. 523 at p. 3250 (dec'd. 4/29/75).

CONCLUSION

FOR THE ABOVE STATED REASONS AND FOR THE REASONS STATED IN APPELLANT'S MAIN BRIEF THE JUDGMENT HEREIN SHOULD BE REVERSED, THE INDICTMENT DISMISSED OR, IN THE ALTERNATIVE, REMANDED FOR A NEW TRIAL.

Respectfully submitted,

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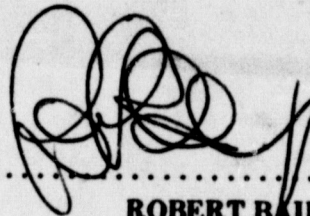
STATE OF NEW YORK     )  
                                      : SS.  
COUNTY OF RICHMOND    )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 2 day of June, 1975 deponent served the within Brief upon M. S. Attorney

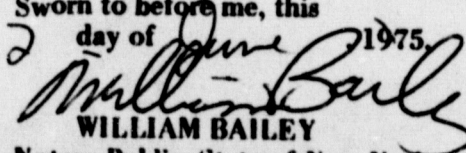
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the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.



ROBERT BAILEY

Sworn to before me, this  
2 day of June, 1975.  
  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1976